

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1400**

**96TH GENERAL ASSEMBLY**

4238S.06T

2012

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**AN ACT**

To repeal sections 67.085, 361.070, 361.080, 400.9-311, and 408.052, RSMo, and to enact in lieu thereof five new sections relating to financial transactions, with existing penalty provisions and an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 67.085, 361.070, 361.080, 400.9-311, and 408.052, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 67.085, 361.070,  
3 361.080, 400.9-311, and 408.052, to read as follows:

67.085. Notwithstanding any law to the contrary, any political subdivision of the state  
2 and any other public entity in Missouri may invest funds of the public entity not immediately  
3 needed for the purpose to which such funds or any of them may be applicable provided each  
4 public entity meets the requirements for separate deposit insurance of public funds permitted by  
5 federal deposit insurance and in accordance with the following conditions:

6 (1) The public funds are invested through a financial institution which has been selected  
7 as a depository of the funds in accordance with the applicable provisions of the statutes of  
8 Missouri relating to the selection of depositories and such financial institution enters into a  
9 written agreement with the public entity;

10 (2) The selected financial institution arranges for the deposit of the public funds in  
11 [certificates of] deposit **accounts** in one or more financial institutions wherever located in the  
12 United States, for the account of the public entity;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13           (3) Each such [certificate of] deposit [issued by financial institutions as provided in  
14 subdivision (2) of this section] **account** is insured by federal deposit insurance for one hundred  
15 percent of the principal and accrued interest of the [certificate of] deposit;

16           (4) The selected financial institution acts as custodian for the public entity with respect  
17 to [the certificate of] **such** deposit [issued for its account] **accounts**; and

18           (5) [At the same time] **On the same date** that the public funds are deposited [and the  
19 certificates of deposit are issued] **under subdivision (2) of this section**, the selected financial  
20 institution receives an amount of deposits from customers of other financial institutions equal  
21 to the amount of the public funds initially invested by the public entity through the selected  
22 financial institution.

          361.070. 1. The director of finance and all employees of the division of finance, which  
2 term shall, for purposes of this section and section 361.080, include special agents, shall, before  
3 entering upon the discharge of their duties, take the oath of office prescribed by the constitution,  
4 and, in addition, take an oath that they will not reveal the conditions or affairs of any financial  
5 institution or any facts pertaining to the same, that may come to their knowledge by virtue of  
6 their official positions, unless required by law to do so in the discharge of the duties of their  
7 offices or when testifying in any court proceeding. For purposes of this section and section  
8 361.080, "financial institution" shall mean any entity subject to chartering, licensing, or  
9 regulation by the division of finance.

10           2. The director of finance and all employees of the division of finance shall further  
11 execute to the state of Missouri good and sufficient bonds with corporate surety, to be approved  
12 by the governor and attorney general, conditioned that they will faithfully and impartially  
13 discharge the duties of their offices, and pay over to the persons entitled by law to receive it, all  
14 money coming into their hands by virtue of their offices. The principal amount of bond  
15 applicable to each employee shall be determined by the state banking and savings and loan board.  
16 The bond, after approval by the governor and attorney general, shall be filed with the secretary  
17 of state for safekeeping. The bond premiums, not to exceed one percent on the amount thereof,  
18 shall be paid out of the state treasury in the same manner as other expenses of the division.

19           3. Neither the director of finance nor any employees of the division of finance who  
20 participate in the examination of any bank or trust company, or who may be called upon to make  
21 any official decision or determination affecting the operation of any bank or trust company, other  
22 than the members of the state banking and savings and loan board who are required to have  
23 experience managing a bank or association as defined in chapter 369, shall be an officer, director,  
24 attorney, owner, or holder of stock in any bank or trust company or any bank holding company  
25 as that term is defined in section 362.910, nor shall they receive, directly or indirectly, any

26 payment or gratuity from any such organization, nor engage in the negotiation of loans for others  
27 with any state bank or trust company, nor be indebted to any state bank or trust company.

28       **4. The director of the division of finance shall establish an internal policy to ensure**  
29 **the professional conduct of employees of the division of finance who participate in the**  
30 **examination of any person or entity under the jurisdiction of the director of the division**  
31 **of finance, or who may be called upon to make any official decision or determination**  
32 **affecting the operation of any person or entity under the jurisdiction of the director of the**  
33 **division of finance. The policy shall address such matters deemed appropriate by the**  
34 **director of the division of finance, including, but not limited to, procedures to address and**  
35 **mitigate the conflict of interest presented by offers of employment or negotiations**  
36 **regarding employment between an employee of the division and any person or entity under**  
37 **the jurisdiction of the director of the division of finance.**

38       **5.** The director of finance, in connection with any examination or investigation of any  
39 person, company, or event, shall have the authority to compel the production of documents, in  
40 whatever form they may exist, and shall have the authority to compel the attendance of and  
41 administer oaths to any person having knowledge of any issue involved with the examination or  
42 investigation. The director may seek judicial enforcement of an administrative subpoena by  
43 application to the appropriate court. An administrative subpoena shall be subject to the same  
44 defenses or subject to a protective order or conditions as provided and deemed appropriate by  
45 the court in accordance with the Missouri Supreme Court Rules.

361.080. 1. To ensure the integrity of the examination process, the director of finance  
2 and all employees of the division of finance shall be bound under oath to keep secret all facts and  
3 information obtained in the course of all examinations and investigations [except] **subject only**  
4 **to the exceptions set out below. When disclosure is necessary or required under this**  
5 **subsection, the director may set conditions and limitations including an agreement of**  
6 **confidentiality or seek a judicial protective order under subsection 2 of this section. The**  
7 **exceptions allowing disclosure are as follows:**

8       (1) To the extent that the public duty of the director requires the director to report  
9 information to another government official or agency or take administrative or judicial  
10 enforcement action regarding the affairs of a financial institution;

11       (2) When called as a witness in a court proceeding relating to such financial institution's  
12 safety and soundness or in any criminal proceeding;

13       (3) When reporting on the condition of the financial institution to the officers and  
14 directors of the financial institution or to a holding company which owns the financial institution;

15       (4) When reporting findings to a complainant, provided the disclosure is limited to such  
16 complainant's account information;

17 (5) When exchanging information with any agency which regulates financial institutions  
18 under federal law or the laws of any state when the director of finance determines that the sharing  
19 of information is necessary for the proper performance by the director of finance and the other  
20 agencies, that such information will remain confidential as though subject to section 361.070 and  
21 this section and that said agencies routinely share information with the division of finance;

22 (6) When authorized by the financial institution's board of directors to provide the  
23 information to anyone else; or

24 (7) [When disclosure is necessary or required, the director may set conditions and  
25 limitations, including an agreement of confidentiality or a judicial or administrative protective  
26 order.] **When undergoing a state audit, provided that the director of finance has entered  
27 an agreement of confidentiality with the state auditor. The agreement of confidentiality  
28 shall include provisions for the redaction of records to remove protected information from  
29 disclosure. The redaction of information shall be required when it is comprised of  
30 nonpublic personal or proprietary commercial and financial information, trade secrets,  
31 information the disclosure of which could prejudice the effective performance or security  
32 of the division of finance including component CAMELS ratings or other sensitive  
33 findings, or information that is protected under any recognized privilege, such as attorney  
34 client privilege or work product. Protected information shall also be identifying bank  
35 information including anything that could be matched with public information to discern  
36 the identity of a financial institution under the jurisdiction of the division of finance or of  
37 individual persons or business entities served by such financial institutions. When  
38 confidential or protected information relating to a particular financial institution under  
39 the division's jurisdiction is requested, the director of the division of finance shall provide  
40 notice to that institution at least thirty days prior to production, and shall provide the  
41 institution a copy of the proposed agreement of confidentiality. The affected institution  
42 may submit comments to the director regarding the agreement or the production and may  
43 seek review of the decision to produce the information or of the confidentiality agreement,  
44 or both, under the provisions of section 536.150. The director of the division of finance  
45 may forego the notice to a financial institution under this subsection when the notice would  
46 compromise an investigation by any agency with criminal prosecutorial powers.**

47 2. In all other circumstances, facts and information obtained by the director of finance  
48 and the employees of the division of finance through examinations or investigations shall be held  
49 in confidence absent a court's finding of compelling reasons for disclosure. Such finding shall  
50 demonstrate that the need for the information sought outweighs the public interest in free and  
51 open communications during the examination or investigation process. To assure a meaningful  
52 hearing, any financial institution that is not already a party to the judicial proceeding and whose

53 information is the subject of a records request or subpoena shall be joined or notified and  
54 permitted to intervene in the hearing and to participate regarding the production request or  
55 subpoena. In no event shall a financial institution, or any officer, director, or employee thereof,  
56 be charged with libel, slander, or defamation for any good faith communications with the director  
57 of finance or any employees of the division of finance.

58 3. If the director or any employees of the division of finance disclose the name of any  
59 debtor of any financial institution or disclose any facts obtained in the course of any examination  
60 or investigation of any financial institution, except as herein provided, the disclosing party shall  
61 be deemed guilty of a misdemeanor and upon conviction shall be subject to forfeiture of office  
62 and the payment of a fine not to exceed one thousand dollars.

400.9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing  
2 statement is not necessary or effective to perfect a security interest in property subject to:

3 (1) A statute, regulation, or treaty of the United States whose requirements for a security  
4 interest's obtaining priority over the rights of a lien creditor with respect to the property preempt  
5 section 400.9-310(a);

6 (2) Sections 301.600 to 301.661, section 700.350, and section 400.2A-304; or

7 (3) A certificate-of-title statute of another jurisdiction which provides for a security  
8 interest to be indicated on the certificate as a condition or result of the security interest's  
9 obtaining priority over the rights of a lien creditor with respect to the property.

10 (b) Compliance with the requirements of a statute, regulation, or treaty described in  
11 subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing  
12 of a financing statement under this article. Except as otherwise provided in subsection (d) and  
13 sections 400.9-313 and 400.9-316(d) and (e) for goods covered by a certificate of title, a security  
14 interest in property subject to a statute, regulation, or treaty described in subsection (a) may be  
15 perfected only by compliance with those requirements, and a security interest so perfected  
16 remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

17 (c) Except as otherwise provided in subsection (d) and section 400.9-316(d) and (e),  
18 duration and renewal of perfection of a security interest perfected by compliance with the  
19 requirements prescribed by a statute, regulation, or treaty described in subsection (a) are  
20 governed by the statute, regulation, or treaty. In other respects, the security interest is subject to  
21 this article.

22 (d) During any period in which collateral is inventory held for sale or lease by a person  
23 or leased by that person as lessor and that person is in the business of selling [or leasing] goods  
24 of that kind, this section does not apply to a security interest in that collateral created by that  
25 person [as debtor].

408.052. 1. No lender shall charge, require or receive, on any residential real estate loan, any points or other fees of any nature whatsoever, excepting insurance, including insurance for involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer or the seller or any other person, except that the lender may charge bona fide expenses paid by the lender to any other person or entity except to an officer, employee, or director of the lender or to any business in which any officer, employee or director of the lender owns any substantial interest for services actually performed in connection with a loan. In addition to the foregoing, if the loan is for the construction, repair, or improvement of residential real estate, the lender may charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for a default charge for any installment not paid in full within fifteen days of its scheduled due date. The restrictions of this section shall not apply:

(1) To any loan which is insured or covered by guarantee made by any department, board, bureau, commission, agency or establishment of the United States, pursuant to the authority of any act of Congress heretofore or hereafter adopted; and

(2) To any loan for which an offer or commitment or agreement to purchase has been received from and which is made with the intention of reselling such loan to the Federal Housing Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to any successor to the above-mentioned organizations, to any other state or federal governmental or quasi-governmental organization; [and]

**(3) To any mortgage broker making loans on manufactured homes or modular units; and**

**(4)** Provided that the 1994 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in excess of those permitted under this section shall be returned to the person from whom received upon demand.

2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an officer, employee or director of the lender, or to any business in which such person has an interest, bona fide fees for services actually and necessarily performed in good faith in connection with a residential real estate loan, provided:

(1) Such services are individually listed by amount and payee on the loan-closing documents; and

(2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect to the residential real estate loan in question. When fees charged need not be disclosed in the annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations

37 thereunder because such fees are de minimis amounts or for other reasons, such fees need not  
38 be included in the annual percentage rate for state examination purposes.

39         3. The lender may charge and collect bona fide fees for services actually and necessarily  
40 performed in good faith in connection with a residential real estate loan as provided in subsection  
41 2 of this section; however, the lender's board of directors shall determine whether such bona fide  
42 fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section,  
43 but may allow current contractual relationships to continue for up to two years.

44         4. If any points or fees are charged, required or received, which are in excess of those  
45 permitted by this section, or which are not returned upon demand when required by this section,  
46 then the person paying the same points or fees or his or her legal representative may recover  
47 twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that  
48 the action is brought within five years of such payment.

49         5. Any lender who knowingly violates the provisions of this section is guilty of a class  
50 B misdemeanor.

Section B. In order to promote financial transactions and protect confidentiality in  
2 auditing such transactions, section A of this act is deemed necessary for the immediate  
3 preservation of the public health, welfare, peace and safety, and is hereby declared to be an  
4 emergency act within the meaning of the constitution, and section A of this act shall be in full  
5 force and effect upon its passage and approval.

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